

Application No: 10/820,111
Attorney's Docket No: ALC 3125

REMARKS/ARGUMENTS

Claims 1-7 and 9-20 are pending in the present application. Claims 1, 6, and 14 are independent. Claim 8 is canceled without prejudice to, or disclaimer of, the subject matter recited therein. The subject matter previously recited in claim 8 is incorporated into claims 1, 6, and 14 by this Amendment. The dependency of claim 9 is altered as necessitated by the cancellation of claim 8.

CLAIM OBJECTIONS

In section 1 on page 2, the Office Action objects to claim 7 due to the specified informalities. Claim 7 is amended to address the specified informalities. Applicant respectfully submits that claim 7, as amended, complies with all applicable requirements. Therefore, Applicant respectfully requests that the objection to claim 7 be withdrawn.

REJECTION UNDER 35 U.S.C. § 103

In section 3 on pages 2-5, the Office Action rejects claims 1-3, 5-7, 10, and 11 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,494,831 to Koritzinsky in view of U.S. Patent No. 6,405,248 to Wood. Applicant respectfully traverses this rejection.

Claims 1 and 6 recite "specifying, by a user, at least one connectivity verification threshold for comparison to the connectivity verification results" (emphasis added). Claim 14 contains a similar recitation.

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In section 5, on page 6, with respect to the rejection of claim 8, where the quoted subject matter was previously recited, the Office Action correctly concedes that Koritzinsky and Wood fail to disclose, teach, or suggest this subject matter. With respect to this subject matter, however, the Office Action relies on the background of Applicant's specification, alleging that paragraphs [0014] and [0018] are admitted prior art. The Office Action also makes this allegation with respect to paragraphs [0021] and [0022].

Applicant submits that, although paragraphs [0014], [0018], [0021], and [0022] are contained in the "Background" section of the specification, there is no admission that these paragraphs are "prior art" under 35 U.S.C. §102. Rather, Applicant submits that the subject matter described in the specification as "Background" and referred to in the Office Action as admitted prior art is not prior art pursuant to 35 U.S.C. §102. See, e.g., M.P.E.P. §§2132 at II. and 2133.03(d).

Further, even assuming, *arguendo*, that the Office Action is correct in asserting that these paragraphs are admitted prior art, which they are not, Applicant nonetheless disagrees with the rejection. Applicant respectfully submits that the Office Action has mischaracterized the subject matter described in paragraphs [0014] and [0018] of Applicant's specification.

More particularly, paragraph [0014] describes stamping a packet with a time value corresponding to the time at which the ping probe packet was issued to determine delay and jitter. Paragraph [0018] describes providing delay and jitter profiles for each determined transport path. Neither paragraph [0014] nor paragraph [0018] discloses, teaches, or suggests that a connectivity verification threshold is specified by a user.

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Accordingly, Applicant respectfully submits that Koritzinsky, Wood, and the allegedly admitted prior art from Applicant's specification fail to disclose, teach, or suggest "specifying, by a user, at least one connectivity verification threshold for comparison to the connectivity verification results," as recited in claims 1 and 6 and similarly recited in claim 14.

Applicant respectfully submits that claims 2, 3, and 5 are allowable based at least on their dependence from claim 1 for the reasons stated above in connection with claim 1. Applicant respectfully submits that claims 7, 10, and 11 are allowable based at least on their dependence from claim 6 for the reasons stated above in connection with claim 6. For at least the forgoing reasons, Applicant respectfully requests that the rejection of claims 1-3, 5-7, 10, and 11 under 35 U.S.C. § 103 be withdrawn.

In section 4 on pages 5-6, the Office Action rejects claim 4 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Koritzinsky in view of Wood and further in view of U.S. Patent No. 6,965,572 to Boodaghians. Applicant respectfully traverses this rejection.

Applicant respectfully submits that claim 4 is allowable based at least on its dependence from claim 1 for the reasons stated above in connection with claim 1. Boodaghians fails to overcome the deficiencies in Koritzinsky and Wood correctly conceded in section 5 on page 6 of the Office Action and the deficiencies in Applicant's allegedly admitted prior described above. For at least the forgoing reasons, Applicant respectfully requests that the rejection of claim 4 under 35 U.S.C. § 103 be withdrawn.

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In section 5 on page 6, the Office Action rejects claims 8, 9, 12, and 13 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Koritzinsky in view of Wood and further in view of allegedly admitted prior art. Applicant respectfully traverses this rejection.

Claim 8 is canceled without prejudice to, or disclaimer of, the subject matter recited therein. Further, this rejection is discussed above in connection with an earlier rejection. Applicant respectfully submits that claims 9, 12, and 13 are allowable based at least on their dependence from claim 6 for the reasons stated above in connection with claim 6. For at least the forgoing reasons, Applicant respectfully requests that the rejection of claims 8, 9, 12, and 13 under 35 U.S.C. § 103 be withdrawn.

In section 6 on pages 8-10, the Office Action rejects claims 14-18 and 20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Koritzinsky in view of Boodaghians. Applicant respectfully traverses this rejection.

Applicant respectfully submits that claims 14-18 and 20 are allowable based at least on their dependence from claim 14 for the reasons stated above in connection with claim 14. Boodaghians fails to overcome the deficiencies in Koritzinsky correctly conceded in section 5 on page 6 of the Office Action and the deficiencies in Applicant's allegedly admitted prior described above. For at least the forgoing reasons, Applicant respectfully requests that the rejection of claims 14-18 and 20 under 35 U.S.C. § 103 be withdrawn.

In section 7 on page 10, the Office Action rejects claim 19 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Koritzinsky in view of Boodaghians and further in view of allegedly admitted prior art. Applicant respectfully traverses this rejection.

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With respect to the subject matter recited in claim 19, the Office Action relies on the background of Applicant's specification, alleging that paragraphs [0014], [0021], and [0022] are admitted prior art. The errors in this incorrect reliance are discussed above in connection with another rejection. Further, even assuming, *arguendo*, that the Office Action is correct in asserting that these paragraphs are admitted prior art, which they are not, Applicant respectfully submits that claim 19 is allowable based at least on its dependence from claim 14 for the reasons stated above in connection with claim 14. Boodaghians and the allegedly admitted prior art in paragraphs [0014], [0021], and [0022] of Applicant's specification fail to overcome the deficiencies in Koritzinsky correctly conceded in section 5 on page 6 of the Office Action.

For at least the forgoing reasons, Applicant respectfully requests that the rejection of claims 14-18 and 20 under 35 U.S.C. § 103 be withdrawn.

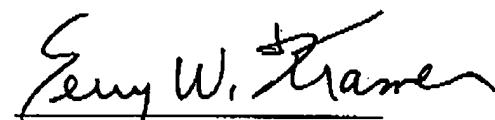
CONCLUSION

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

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In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
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